D.B. CIVIL SPECIAL APPEAL(W)NO.1092/2006

Om Prakash Khatik
Vs.
State of Rajasthan & Ors.

DATE OF ORDER :: 14-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Kuldeep Aswal, for the appellant.

Condonation application has been put up for consideration but we looked into prima facie merit of the case so that condonation may not be a futile exercise, and accordingly heard the counsel.

This appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction upon the respondents to release the salary from the periods 1.2.1997 to 7.7.1997 and 17.10.1997 to 1.5.1998.

The appellant contested the claim of the department about his absence from duty which led to investigation by an Investigating Officer who found that the appellant was absent from duty during the aforesaid periods. This was pointed out to the counsel and he was asked to substantiate his claim. It was submitted that the appellant was transferred five times during the relevant period. We are not impressed by the argument. It was open to the appellant to challenge the orders of

transfer. Transfers and postings are exigencies of the service. Unauthorised absence from duty on the pretext transfer cannot justify payment of salary for absence period. The appellant should be satisfied that he has been leniently dealt with, for absence from duty is a misconduct for which more serious action could have been taken against him.

We find no merit in this appeal which is accordingly dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen